

Honorable ~~Thomas S. Zilly~~ <sup>MR</sup>

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4 AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
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CV 02-01683 #00000008

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 VALVE, L L.C., a Washington limited liability  
company,

No CV02-1683

11 Plaintiff,

ANSWER, COUNTERCLAIM  
12 AND JURY DEMAND

v

13 SIERRA ENTERTAINMENT, INC (AKA  
14 SIERRA ON-LINE, INC ),

15 Defendant

16 ANSWER

17 Defendant, Sierra Entertainment, Inc ("Sierra") by and through its below named  
18 counsel, answers plaintiff's Complaint as follows:

19 I. JURISDICTION AND VENUE

20 1 Responding to the allegations of paragraph one of the Complaint, Sierra admits  
21 that plaintiff alleges copyright infringement, Sierra denies that it has infringed any copyrights,  
22 and denies every other allegation in said paragraph one

23 2 Responding to the allegations of paragraph two, Sierra admits that the Court  
24 has subject matter jurisdiction with respect to activities within the ambit of United States  
25 copyright law, denies that the Court has subject matter jurisdiction with respect to overseas

1 activities or actions of Sierra outside the ambit of United States copyright law, and admits the  
2 Court's personal jurisdiction over it.

3 Sierra admits the allegations in paragraph three of the Complaint

## II. THE PARTIES

4 Responding to the allegations in paragraph four of the Complaint, Sierra  
5 admits that Valve is a Washington limited liability company having a principal place of  
6 business as alleged, and admits the allegations as to awards received by Valve. Sierra denies  
7 that Valve is the sole developer of the Valve Games, and denies every other allegation in said  
8 paragraph four.

5 Sierra admits the allegations in paragraph five of the Complaint

### III. STATEMENT OF FACTS

12 6 Responding to the allegations in paragraph six of the Complaint, Sierra admits  
13 that the Valve Games include the Valve Engine. Sierra is without information or knowledge  
14 sufficient to form a belief as to the truth as to the remaining allegations in said paragraph six,  
15 and therefore denies each such allegation

16                   7        Responding to the allegations of paragraph seven of the Complaint, Sierra  
17 admits that it entered into a Software Publishing Agreement on March 29, 2001, but denies  
18 the remainder of the allegations in said paragraph seven. Sierra affirmatively states that the  
19 agreement, as amended, speaks for itself, and Sierra denies that the agreement and  
20 amendments constitute the entire scope of the parties' agreement.

21 8 Responding to the allegations of paragraph eight, Sierra admits that it has and  
22 continues to distribute and license certain of the Valve Games to "internet cafes", and denies  
23 every other allegation in said paragraph eight

24 9. Sierra denies every allegation in paragraph nine of the Complaint

## COUNT ONE

COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501

10 In response to paragraph ten of the Complaint, Sierra incorporates its above responses to paragraphs one through nine

11. Sierra is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph eleven, and therefore denies them

12 Sierra is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph twelve, and therefore denies them.

13 Sierra admits that it has and continues to distribute and license one or more of the Valve Games to "cyber cafes". Sierra denies every other allegation in paragraph thirteen of the Complaint

14 Sierra denies every allegation in paragraph fourteen of the Complaint

## AFFIRMATIVE DEFENSES

15 Plaintiff's Complaint fails to state a claim upon which relief can be granted

16 This Court lacks subject matter jurisdiction to adjudicate all or some of the  
set forth in plaintiff's Complaint.

17 Plaintiff, by its conduct, has waived or is estopped from asserting its claims  
against Sierra

18 Some or all of the relief sought by the Plaintiff is barred pursuant to 17 U S C

## COUNTERCLAIM

19 This is a counterclaim seeking the Court's adjudication and declaration of rights between the parties, pursuant to 28 U.S.C. § 2201(a), as to the Software Publishing Agreement between the parties dated March 29, 2001, and its addenda

20 This Court has personal jurisdiction over plaintiff and counterdefendant Valve  
LLC ("Valve"), as Valve is a Washington limited liability company having its principal place  
of business in this district, and by virtue of Valve's activities conducting business in this  
district

1       21     This Court has subject matter jurisdiction over Sierra's claim for declaratory  
2 judgment pursuant to 28 U S C. § 1338(a), with respect to Valve's and Sierra's activities  
3 within the ambit of United States copyright law

4       22     Venue is proper in this Court pursuant to 28 U.S C § 1391

5       23     By virtue of Valve's complaint against Sierra in this action, there exists an  
6 actual case or controversy as to Sierra's rights to manufacture, distribute, rent, lease and  
7 license the Valve Games to internet cafes within the United States, as Retail Packaged  
8 Product

9       24     If the Court determines that it has subject matter jurisdiction over the playing  
10 of Valve Games in internet cafes outside the United States, then an actual case or controversy  
11 exists as to whether Sierra has the right to manufacture, distribute, rent, lease or license the  
12 Valve Games to internet cafes outside the United States, as Retail Packaged Product

13       25.    All of Sierra's activities with respect to licensing the Valve Games to internet  
14 cafes, both inside and outside the United States, are within the scope of the license rights  
15 granted to Sierra under the Software Publishing Agreement dated March 29, 2001, and  
16 addenda.

17       26     All of Sierra's activities with respect to licensing the Valve Games to internet  
18 cafes, both inside and outside the United States, are within the scope of other express or  
19 implied license rights granted to Sierra by Valve

20       27.    Both before and after execution of the Software Publishing Agreement, Valve  
21 had actual and constructive knowledge that Sierra was licensing the Valve Games to internet  
22 cafes both inside and outside the United States, and this licensing activity was undertaken  
23 with the express or implied approval of agents of Valve having actual or apparent authority to  
24 approve. In reliance on Valve's approval, Sierra has entered into contractual licenses with  
25 internet cafes both before and after execution of the Software Publishing Agreement

28 By its conduct, Valve has waived its rights to object to Sierra's activities concerning internet cafes, or Valve is estopped from claiming that Sierra's license rights do not permit Sierra's activities concerning internet cafes.

29 Wherefore, Sierra is entitled to the Court's declaratory judgment that it has, and  
in the past had, the right to license the Valve Games to internet cafes both inside and outside  
the United States

## PRAYER FOR RELIEF

Wherefore, having answered, Sierra prays the court for the following relief:

9 A That the Court dismiss, for lack of subject matter jurisdiction, that part of  
10 plaintiff's complaint that relates to activities outside the ambit of United States copyright law,  
11 or where copyright is governed by the law of a foreign sovereign,

12 B That judgment enter in favor of Sierra and against Valve as to all causes of  
13 action set forth in plaintiff's Complaint,

14 C That judgment enter in favor of Sierra and against Valve as to the cause of  
15 action set forth in Sierra's Counterclaim, and that the Court declare that Sierra has, and has in  
16 the past had, rights under the Software Publishing Agreement to license the Valve Games to  
17 internet cafes,

18 D That Sierra have its costs, expert witness fees, and attorney's fees as provided  
19 by agreement between the parties, or by law or any applicable statute; and

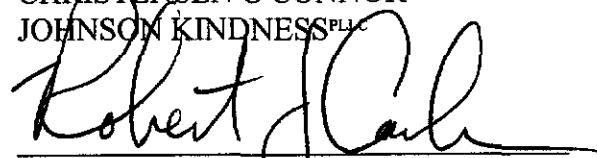
E Such other and further relief as the Court may deem just and proper

**JURY DEMAND**

Sierra demands trial to the jury as to all issues so triable

Dated this 25 day of NOVEMBER, 2002

1 CHRISTENSEN O'CONNOR  
2 JOHNSON KINDNESS<sup>PLLC</sup>  
3



4 F Ross Boundy, WSBA No 403  
5 Robert J. Carlson, WSBA No 18,455  
6 Mark P. Walters, WSBA No 30,819  
7

8 Attorneys for Defendant  
9 Sierra Entertainment, Inc  
10

11 CERTIFICATE OF SERVICE  
12

13 I hereby certify that on the 25<sup>th</sup> day of November, 2002, the original of the ANSWER,  
14 COUNTERCLAIM AND JURY DEMAND was filed with the Court and a true copy was  
15 served in the manner listed below  
16

17 Via Hand Delivery to  
18

19 Karl J. Quackenbush  
20 Jason P. Holtman  
21 Kristen J. Boraas  
22 Preston Gates & Ellis  
23 701 Fifth Avenue, Suite 5000  
24 Seattle, Washington 98104  
25 Attorneys for Plaintiff Valve L.L.C  
26

27   
(signature)